IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 476/2004

1 Ahuja Goods Carrier (P) Ltd
Nainital Road Civil lines
Rampur through its partner.
2. Amarjeet Singh Ahuja
3 Amreek Singh Ahuja
both resident of Nainital road
civil lines ,Rampur UP petitioners

Versus

1. State of Uttaranchal
2. B.K. Jain
S/o Sri Naem Chand Jain
R/o Delhi Auto Engineering works,
Nawab Road, Haldwani,
District Nainital

Respondents

Sh. Sarvesh Agarwal ld. counsel for the petitioners
Sh. R.S.Sammal ,ld counsel and Ld AGA for opposite party

Hon'ble B.C. Kandpal, J

This petition has been filed under Section 482 Cr.PC by the applicants for setting aside the summoning order passed by the learned Judicial Magistrate , Haldwani on 30.1.2004 and the revisional order passed by Sessions Judge, Nainital on 13.9.2004.

Brief facts giving rise to this petition are that the proceedings under Section 138 of the Negotiable Instruments Act were instituted by respondents 2 before the court of learned Judicial Magistrate Haldwani. The evidence under Section 200 and 202 Cr.PC were recorded before the learned Judicial Magistrate and thereafter petitioners were summoned vide order dated 30.1. 2004.

Against the aforesaid summoning order the petitioners appeared before the lower court and filed their objections. The complainant also filed his reply before the court of learned Magistrate. The learned court after having perused the entire material on record rejected the objection of the petitioner vide order dated 19.8.2004. The petitioners felling aggrieved by the aforesaid order preferred an revision before the Learned Sessions Judge, Nainital. The learned Sessions Judge also dismissed the revision vide order dated 13 9.2004

Feeling aggrieved by the aforesaid order this petition has been preferred before this court.

Counter and rejoinder affidavits have been exchanged

Heard Sh. Sarvesh Agarwal the learned counsel for the applicant Sri. R.S .Sammal ,learned counsel for respondent 2, the learned AGA and perused the record .

The learned counsel for the petitioners has argued that no case under Section 138 of negotiable Instrument Act is made out on the basis of complaint itself.

It has also been argued that the entire evidence has not been taken into account by the learned court.

I Fail to appreciate the arguments advanced by the learned counsel for the petitioners.

While exercising the powers under section 482 Cr.PC I am not supposed to assume the role of trial court and embark upon the inquiry as to the reliability of the evidence and sustainability of accusation on reasonable appreciation of such evidence.

For deciding , whether the criminal proceedings should be allowed to continue or the same be quashed , two aspects are to be satisfied.

> a) Whether the unceremonious allegations as made in the complaint prima facie establish the offence and (b) Whether it is expedient in

the interest of justice to permit the prosecution to continue.

On the plain reading of the order passed by the Learned Magistrate , issuing summons to the petitioners and keeping in view the allegations made in the complaint as well as sworn statement of the complainant, it appears that a prima facie case is made out at this stage.

I do not find any special feature in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue.

I do not find any abuse of the process of the court .The entire facts are extremely incomplete and hazy and therefore at this premature stage, the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material.

I therefore, do not find any sufficient ground to interfere with the impugned order passed by the court below .

The application lacks merit and the same is liable to be dismissed.

Accordingly the petition is dismissed.

(B.C. Kandpal, J.)

September 23, 2005
nbj